Legally Irrelevant Factors in Judicial Decision-making: Battle Deaths and the Imposition of the Death Penalty in Nazi Germany

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Legally Irrelevant Factors in Judicial Decision-making: Battle Deaths and the Imposition of the Death Penalty in Nazi Germany

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Abstract

We study the effect of legally irrelevant events on the sentencing outcomes of around 2,500 individual defendants, heard before the People's Court in Nazi Germany. Our analysis exploits exogeneous variation in battle deaths and estimates their effect on the likelihood of receiving the death penalty. According to our results, higher German fatalities on the battlefield systematically increased the chances of receiving the death penalty. We show that decisions by experienced judges were less affected by battle deaths, while judges who were more ideologically committed to the regime were more likely to impose the death penalty in response to hearing news of higher German fatalities. Our results are not driven by particular types of offenses or defendants, time periods, or changes in arrest patterns and are robust to the use of major bombing raids of German cities instead of battle deaths. We also find some evidence that victories of the German national soccer team decreased the chances of capital punishment.

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1 Introduction

Justitia, the Roman goddess of justice, is often depicted as a blindfolded woman holding a scale and a sword in her hands. The blindfold represents the idea that judicial decisions should be made in an objective and impartial manner and be free from emotions.

However, the decisions of actual judges often deviate from those ideals and even small factors such as the timing of a trial's meal breaks (Danzinger et al. 2011) can have a systematic impact on sentencing decisions. Recent literature at the cross-roads between economics and psychology highlights that the decisions of individuals are often heavily influenced by one's emotional state of mind at the actual time of decision making (e.g. Laibson 1997, Bordalo et al. 2013). This can lead to suboptimal intertemporal decisions, even in the context of important, and high-stakes, environments (Busse et al. 2015). In the context of judicial decision making, this means that the emotional state of the judges could literally be the difference between life and death for the defendant.

In this paper we, therefore, address the broad research question: Do legally irrelevant factors that can influence the judges' emotional state at the time of decision, impact the outcome of court cases? We also ask whether the degree to which extraneous factors influence case outcomes depends on the judges' experience and ideology. To do so, we examine the extent to which battle deaths incurred by the *Wehrmacht* in World War II (WWII) influenced whether defendants tried for treason and high treason were convicted, and sentenced to death, in the People's Court (*Volksgerichtshof*).[1] We find that the number of battle deaths suffered in the period immediately prior to the sentence being handed down is a strong predictor of

[1]The crime of treason concerns itself with acts which harm the state externally (as opposed to high treason which has an internal focus), such as espionage and giving support to the enemy in times of war. In practice, though, the charge of treason was overwhelmingly applied by default to communist and many other left-wing resisters, since the Nazi regime automatically assumed that they must have been working directly, by definition, for Moscow. In the vast majority of instances, however, this was not the case. In those rare examples where military-related information was actually passed on to the Allies, it is important to note that it was typically not of a nature to influence the outcomes of on-going operations in the field. In short, the activities of those charged with high treason and treason were for all intents and purposes unrelated to the battle performance or monthly casualty numbers. We also conduct a robustness test that excludes all cases on subversion of the armed forces from our sample.

whether a defendant charged with treason or high treason was convicted and sentenced to death. The results are generally robust up to three months before the sentence was handed down, with the size effects being strongest with a two-month lag. We also find that not all judges were equally likely to be influenced by battle deaths. In particular, the effect of battle deaths on sentencing is very small for judges who had previously served in the judiciary in the Weimar Republic, suggesting that judicial experience made judges less susceptible to being influenced by battle deaths. Judges who were more ideologically committed to Nazism were more inclined to be influenced by battle deaths than their less-ideological brethren. We further show that defendants who were members of the Communist Party were more likely to be sentenced to death than non-communists in the months following increased battle losses.

There are a number of potential concerns regarding our identification strategy and interpretation of the results: First, the number of cases dealing with espionage and giving support to the enemy could increase during times of intensive fighting and increased battle-deaths. To address, this concern we perform robustness checks that exclude all trials for a particular type of offense (for example, subversion of the armed forces) or type of defendant (military or left-wing political cadre). We show that our results are not driven by those trials and, in fact, the estimated coefficient hardly changes in magnitude. We also show that potential changes in arrest patterns following increased battle deaths or bombing raids do not drive our results. Second, one may be concerned that if judges are sentencing more people to death following increased battle deaths that they are simply reflecting the will of the people. To address this concern, in a further robustness check, we investigate whether the effect of battle deaths on court rulings differs depending on the ideological commitment of the population to Nazi values in the defendant's Kreis. The results suggest that the effect of battle deaths on sentencing outcomes is likely to be driven through their impact on the judges' mood rather than through their impact on the sentiment of the people.

In addition to considering the effect of battle deaths on case outcomes in the People's Court, we also consider outcomes of two other, exogenous series of events that are likely to

have affected the mood of the judges, but which were irrelevant to the legal merits of the case being heard: namely, major allied bombing raids and the outcome of football matches played by the German national team during the period of the Third Reich. As discussed by Waldinger (2016), allied bombing raids represented an exogenous shock that had a strong adverse effect on civilian morale. The outcomes of sporting events have previously been shown to influence election results (Healey et al., 2010; Miller, 2013). In Nazi Germany, the performance of the national football team was considered a matter of national pride. As such, one could expect major allied bombing raids and success in football matches to evoke strong emotion in the judges that might influence whether the death sentence were to be imposed. We find that an increase in the prevalence of major allied bombing raids increases the likelihood that the death sentence was imposed in cases in which sentences were handed down two months after the bombing raid. Similarly, we find that when the national football team wins, judges were less likely to sentence defendants to death in cases in which the sentence was handed down two months after the conclusion of the match.

Our results speak to the debate between advocates of legal formalism and legal realism as to whether the outcome of judicial rulings depend solely on application of the relevant laws to the facts. Legal formalists hold that judges decide cases solely through the application of the law to the facts and are not influenced by legally irrelevant situational considerations (Weinrib, 1988). The legal realist movement, on the other hand, claim that judicial rulings depend on the political or social context in which the decision is made (Posner, 1986). While legal formalists maintain that extraneous factors are irrelevant, legal realists posit that judicial decisions are not made in a vacuum and can be influenced by non-legal considerations.

Our results are important because most would expect that in a "fair and just" criminal trial whether one is convicted, and the sentence one receives, should depend on the application of the law to the facts. It is one thing, as legal realists contend, for judges to draw on their life experiences when deciding how to apply the law to the facts. However, it is quite another, for the outcome of a case to depend on specific recurring events external to

the court room, which could not possibly have any bearing on the guilt, or otherwise, of the defendant in the case. Evidence that this occurs brings into question the soundness of the administration of justice. While our results are for an historical court, they potentially have implications for modern judicial decision-making. There is evidence, for instance, that the threat of terrorism has had an effect on sentencing disparities in Israeli courts (Shayo and Zussman, 2011) and that following 9/11 certain ethnic minorities received longer sentences in courts in the United States (McConnell, 2009).

Previous studies have shown that legally irrelevant situational determinants can influence the outcome of cases. Danzinger et al. (2011) have demonstrated that the timing of a meal break can influence the outcome of a case; Shayo and Zussman (2011) that the outcome of a case is influenced by the intensity of terrorism in the vicinity of the courtroom in the year preceding the ruling; and Lim et al. (2015) that newspaper coverage of a case can influence the sentence length that U.S. state nonpartisan elected judges impose for violent crimes. Beyond the court room, previous studies have revealed that information irrelevant to government performance can influence election outcomes. Healy et al. (2010) show that in the U.S., the outcome of local football games in the 10 days prior to the election influence the outcome of gubernational, Senate and Presidential election outcomes. Miller (2013) finds that professional sports outcomes predict Mayoral elections in the U.S. Bagues and Esteve-Volart (2011) provide evidence that election outcomes in Spain are influenced by who wins in the Spanish Christmas Lottery, a lottery held every Christmas, in which 75 per cent of people participate and ticket sales amount to 0.3 per cent of Spanish GDP.

We extend this limited literature that has examined the role of extraneous factors on legal decision-making and voting intentions in elections to examine the impact of legally irrelevant factors - battle deaths, major allied bombing raids and football matches involving the national team - on judicial decision-making during wartime. The People's Court is an ideal setting to examine the effect of major allied bombing raids and battle deaths on sentencing outcomes, given that defendants were charged with political offenses against the

state. In wartime, increased battle losses, major allied bombing raids and acts of high treason and treason represent an increased threat to the state. Hence, it is conceivable that the emotion evoked by hearing of growing battle losses or the destruction wrought by major allied bombing raids, over which the judge has no control, will influence the sentencing he imposes on those convicted of treason or high treason, something which the judge can control.

Psychologists have established that emotions experienced in one domain can have an effect on decision-making in another domain (Forgas et al., 2005; Schwartz and Clore, 1983). Specifically, events in one domain influence one's state of mind or mood that unconsciously affect evaluation in other domains (Miller, 2013; Schwartz and Clore, 1983). One might expect this to be particularly true when strong emotion, such as that generated by wartime battle casualties or destruction from bombing raids, is evoked in one domain and, in the other domain in which a judgment is being made, those charged with treason and high treason are considered to be *Volksfeinde* (public enemies) opposed to the state, although, of course, they cannot be directly responsible for losses on the battle front or destruction due to major allied bombing raids. Overall, our results are consistent with a story in which bad news from the front impacts negatively on the mood of the judges, affecting sentencing outcomes.

Our findings contribute to recent studies that use data from Nazi Germany to better understand economic, legal or social processes (see, for example, Akbulut-Yuksel and Yuksel, 2015; Ferguson and Voth, 2008; Satyanath et al. 2017; Voigtländer and Voth, 2015; Waldinger, 2016). More specifically, our findings add to studies that have sought to better understand different aspects of decision-making on the People's Court (Gruchmann, 1988; Marxen, 1994; Schlüter, 1995), the closest of which to our study are Geerling et al. (2016, 2017). Geerling et al. (2016) examine how the sentence imposed on those convicted of treason and high treason varied with the characteristics of the defendant and the defendant's prior criminal history. Geerling et al. (2017) examine the effect of the ideological commitment of the judge to Nazism on the likelihood that those convicted of treason and high treason in the People's Court were sentenced to death. Our study, though, differs from Geerling et

al. (2016, 2017) in that the research question is quite different. Specifically, neither of these studies considered the relevance of extraneous factors on decision-making.

2 The Context

Our sample consists of individuals charged with treason or high treason who appeared before the People's Court in Nazi Germany during WWII. The People's Court was established by the Nazis in April 1934 to hear charges of treason and high treason. Commensurate with the establishment of the People's Court, the Nazis enacted the *Law Amending Provisions of Criminal Law and Criminal Procedure* to amend Articles 80-92 of the *Reichsstrafgesetzbuch* (State Penal Code), which was first promulgated in 1871 and defined the scope of acts that constituted high treason and treason. The effect of the amendment to the criminal law was to considerably increase the range of activities that internally (externally) undermined the state that were regarded as high treason (treason). Sentences for defendants convicted of treason and high treason varied considerably from incarceration of differing lengths in a regular prison or penitentiary (hard labor, without civil rights) up to, and including, the death sentence. The State Penal Code contained no clear guidelines as to which sentence should be imposed in which circumstances, which meant that all the judges on the People's Court had enormous discretion in deciding what sentence to impose.

Each case was heard before a presiding judge and four lay members of the Court, drawn from the Nazi Party to provide "political expertise" (Zarusky and Mehringer, 1998; Gruchmann, 1998). The lay members of the Court sat in a purely advisory role and it was the presiding judge who decided on guilt and what sentence to impose and provided the written reasons for the decision. Hence, for all practical purposes decisions of the People's Court were decisions of a single judge. There was no right of appeal (Köch 1989; Marxen 1994; Zarusky, 2011).

The People's Court was divided into senates. Initially, there were three senates, but a

fourth senate was added in November 1935, a fifth senate in November 1941 and a sixth senate in December 1942. Each of the senates heard cases against defendants charged with treason or high treason or both. There was some regional specialization within senates. For example, toward the end of World War II, senate 4 heard cases against Germans from Lorraine, senate 5 heard cases arising in parts of Austria and Senate 6 heard separatist cases in Bavaria and the Alpine regions (Gaue) of Austria. For most of its history, senates 1 and 2 were the only generalist senates empowered to hear cases against defendants charged with both high treason and treason. As most defendants charged with treason were also charged with high treason, this meant that most defendants were tried in senates 1 and 2 (Wagner, 1974). For the most part, there was no *a priori* reason to expect that defendants with specific characteristics (for example, catholics, communists or those of partial Jewish ancestry) would be tried in one senate or another. A possible exception is senate 3 which, toward the end of World War II, heard, *inter alia*, cases of treason in favour of the Soviet Union. One might expect senate 3 to have heard a disproportionate number of cases involving defendants who were communist. But, there are very few cases in the sample from senate 3. Overall just under three quarters of the cases in our sample were heard in senates 1 and 2. Most of the remaining cases were heard in senates 5 and 6, with about 1.2 per cent of cases heard in senates 3 and 4.

As discussed in Geerling et al. (2017) the types of cases which each senate heard constantly changed over time. In some instances, in the space of a few years, judges would be (re)assigned to several different senates. This meant that judges heard a variety of treason and high treason cases against defendants with a range of characteristics When Roland Friesler became President of the Court in August 1942 he transferred high profile cases, and cases in which there was uncertainty as to jurisdiction to his senate (senate 1) or senate 2, which further muddied jurisdictional differences between senates (Wagner, 1974; Wieland, 1989). Koch (1989, p. 229) suggests that the division of jurisdiction between the various senates was not always clearly defined, and especially under Thierack and Freisler the dis-

tinctions were blurred. Wagner (1974, p. 26) reaches the same conclusion, writing: the multiplication of senates, the constant growth in the number of cases, the fact that particular cases involved both high treason and treason, as well as the Freisler type of leadership brought with it an ever stronger blurring of jurisdiction within the individual senates.

All of the judges on the Court were male and all, but one, belonged to the Nazi Party or one of its ancillary organizations. In order to examine whether ideologically more committed judges are more prone to take account of legally irrelevant factors, we need some way to differentiate the judges on the basis of their ideological commitment to Nazism. To do so, following Geerling et al. (2017) we use a binary variable set equal to 1 if the judge joined the Nazi Party before the Nazis came to power in January 1933. Hereafter, these pre-1933 judges will be referred to by the German term for early members of the Nazi party, the *Alte Kämpfer* (old fighters). We assume here that the *Alte Kämpfer* held personal views that were strongly aligned to the values of the Nazi Party. To ascertain whether more experienced career-judges were less likely to be influenced by bad news from the front, we need a proxy for judicial experience. We use a binary variable set equal to 1 if the judge served on the Bench in the Weimar Republic. To examine if communists were more likely to be sentenced to death following receipt of bad news from the front we employ a binary variable set to 1 if the defendant was a member of either the Communist Party of Germany or Austria (KPD/KPÖ). We also control for the judges' age and religion, as well as a number of demographic and human capital characteristics of the defendant.

3 Data

The data on case and defendant characteristics are taken from the official state records of cases tried before the People's Court and Supreme Court collected by the Resistance as High Treason (*Widerstand als Hochverrat*) project. These were complied from West German archives and previously inaccessible files from the East Europe. In total, the collection

contains in excess of 70,000 pages of court files that record the judicial prosecution of more than 6,000 men and women charged with high treason and treason who appeared before the central courts of the Third Reich, 1933-1945 (Zarusky and Mehringer 1998). It includes a wealth of information on the indictment, investigation, judgment and sentencing of each defendant. From these records, we are able to reconstruct the profiles and establish the sentences of those convicted of treason or high treason. Wherever possible, we have verified our information against the entries for individual resisters found in the leading encyclopaedias of German resistance (Steinbach and Tuchel, 1998, 2004).

This study focuses on cases where resistance took place within the territorial boundaries of Germany following the *Anschluss* (union) with Austria in March 1938. We identified 1,334 cases presided over by thirty-five judges, involving 4,177 defendants. Twenty-seven of the thirty-five judges served in the People's Court; the other eight served exclusively in the Supreme Court. To measure a judges' ideological commitment to Nazism, we needed to find more detailed information about their background and career. The *Bundesarchiv* (Federal Archive) in Berlin contains *Personalakten* (personal files) of judges who served on the Supreme Court and People's Court, as well as Nazi Party membership records which survived the war. We located personal files for 26 of the 35 judges (21 of the 27 judges from the People's Court) and supplemented this knowledge with legal encyclopaedias from the Third Reich (Klee, 2003). These files provided additional information on the judges' age, whether they had served on the bench during the Weimar Republic, joined the Nazi Party (if so, their date of admission), and were brought up as a Roman Catholic. This exercise provided information on 26 judges who presided over 1,157 cases involving 3,579 defendants; that is, more than 85 per cent of all defendants charged with treason and high treason for activities carried out within Germany and Austria. Given that the focus of this study is on the effect of war related events on trial outcomes, we limit our sample to the period covered by WWII. Hence, for these analyses, our sample only includes cases where defendants were sentenced in the period 1 September 1939 until 6 April 1945 (the day the

last sentence of the People's Court was handed down). For most specifications this involved 2,430 defendants who were charged with treason or high treason for activities carried out in Austria or Germany.

Figure 1 graphs the number of monthly death sentences (line) and monthly German military fatalities (bars) during the period of observation. Throughout the sample period, there was at least one court decision each month with an average of around 38 decisions per month. Out of the 64 months in the sample, there were only 14 months without any death sentences. On average, there were around 17 trials resulting in a death sentence each month with the peak of 60 death sentences in September 1942.[2]

The fraction of death sentences among court rulings was relatively high. In over 42% of the trials, the defendants were sentenced to death (see Table 1).

Table 1 about here

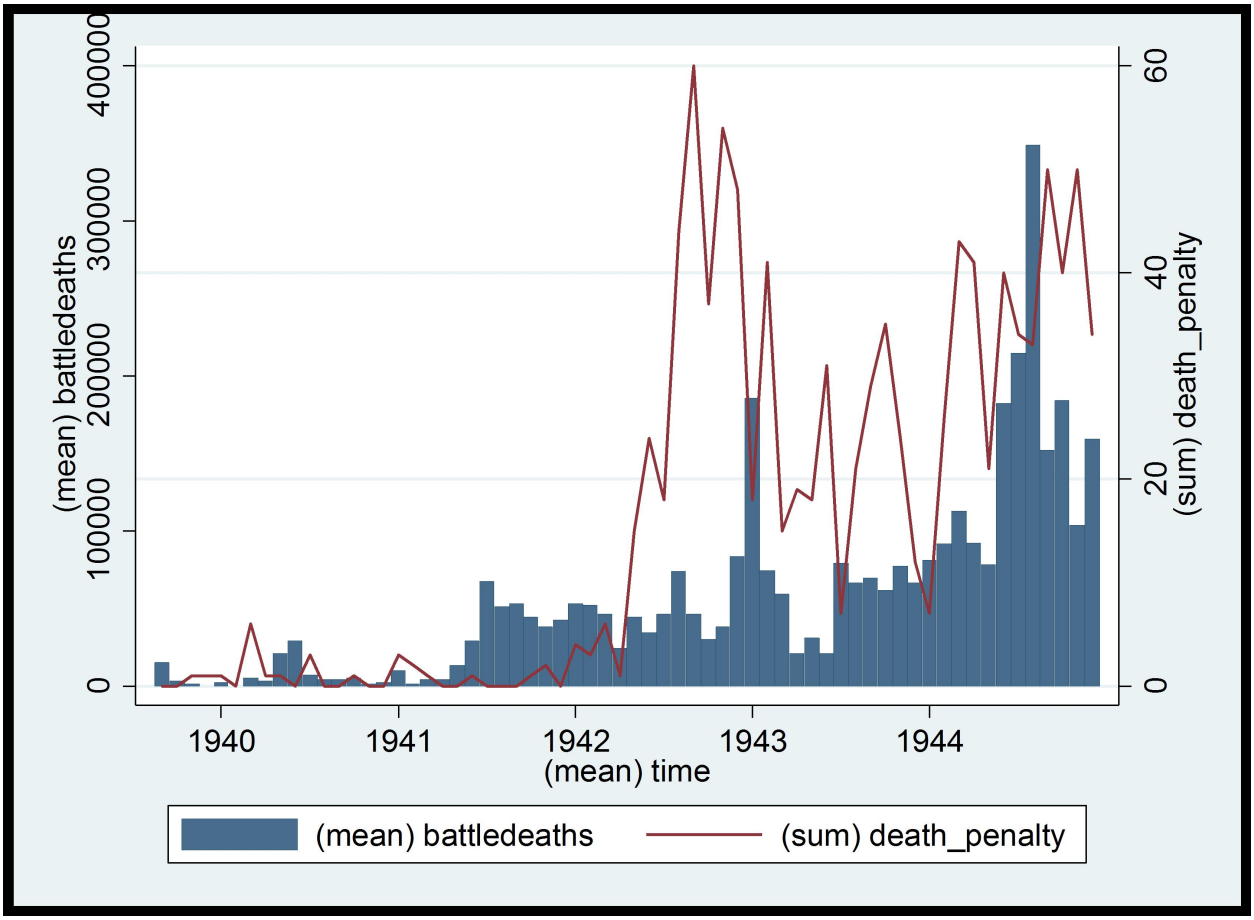
Our main measure for outside events are monthly German military casualties.[3] To measure battle losses, we take the natural log of the absolute number of battle deaths in a given month. The data on battle losses is sourced from German military historian, Rüdiger Overmans, whose study *Deutsche militärische Verluste im Zweiten Weltkrieg* (German Military Casualties in the Second World War), provided a reassessment of German military war dead based on a statistical survey of German military personnel records (Overmans, 2000).

The bars in Figure 1 depict the monthly German military fatalities over the sample period. There are a few peaks in the early period of the war, which are the result of the attack on Poland (September 1939), operation *Weserübung* (Invasion of Denmark and Norway in April - June 1940) as well as the invasion of France (May - June 1940). The

[2]One explanation for this peak is that in May 1942, the Ministry of Justice, in collaboration with Thierack and the Chief Public Prosecutor decided that communist high treason possessed the character of treason; therefore it should be regularly punished with death (Wagner, 1974 p. 804)

[3]In addition to monthly casualties, we also collected data on individual battles that involved both Germany and their major allies (Japan and Italy). Using a number of battle victories and defeats instead, we find that German defeats increase the likelihood of death sentence. However, the estimated coefficient is not statistically significant at conventional levels.

Figure 1: Total Number of People's Court Death Sentences and German Battle Fatalities between 1939 and 1945



Notes: The red line shows the monthly number of People's Court trials that resulted in a death sentence. The blue bars display the monthly German military fatalities during the period September 1939 until March 1945.

monthly casualties start to vastly increase from June 1941 onward with the invasion of the Soviet Union. The period 12/1942 to 2/1943, alone, saw a total of around 330,000 casualties mainly from the Battle of Stalingrad. From June 1944 onward the average amount of monthly casualties exceeds 200,000. The summary statistics in Table 1 show that the average number of monthly casualties is around 92,000. There are two months without any recorded military casualties (December 1939 and February 1940). The month with the largest number of German fatalities in our sample is August 1944.

The paper also considers the impact of the Allied air campaign and the performance of the national football team on sentencing. To measure major allied bombing raids, we only include those which inflicted the greatest damage to German industry and infrastructure, as determined by fatalities, and had the most profound psychological shock on the regime (Keegan, 1989). There were six such major bombing raids: namely, Berlin (25 August, 1940), Cologne (30-31 May 1942), Bremen (25-26 June 1942), Moehne dam (16-17 May 1943), Hamburg (24 July-2 August 1943) and Dresden (13-14 February 1945). As for the German national football team, it played 104 matches while the Nazis were in power, including matches in the Berlin Olympics, World Cup and World Cup qualifiers and international friendlies. The last such match was played on 22 November 1942. The Rec. Sport Soccer Statistics Foundation has details of all 104 matches including dates, opponents, venues and outcomes (RSSSF, 2016).

4 Empirical Analysis

4.1 Empirical Strategy

Our unit of analysis is at the court case level i. We analyse the effect of German battle deaths in month t on the judge's decision to apply the death penalty by specifying an econometric equation of the following general form:

$$death_{it} = \alpha + \lambda_t + T + \varphi B_{it-\tau} + \mathbf{X}_i\gamma + \nu_{it}, \quad (1)$$

where α is a constant, λ_t is a vector of month-of-the-year specific dummy variables, T is a linear time trend, and B is the (natural log of) German battle deaths in month t. t denotes the month of the trial. $\mathbf{X}$ is a vector of case-specific covariates.

Given that we have no theory to guide us about the timing of the effect (How long does it take for the news from the front to arrive in Germany?) we estimate equation 1 using different lags of B, indicated by τ. τ can take the value of 0 (current events) up to 3 (events three months ago).

We estimate equation 1 using probit. The key explanatory variable only varies at a month-to-month level. As such, the same number of battle deaths in month t applies to all individual court cases i that reached a verdict in month t. To account for the potential correlation of model errors for individual court cases within a month, we cluster the standard errors at a year-month level.

Prior to conducting the empirical analysis we would like to address the concern regarding the potential endogenous assignment of judges to particular cases. In general, it is reasonable to assume that the assignment of judges should be completely orthogonal to external events such as battle deaths, bombing raids and football matches. Reassigning a judge to a different case still required a number of bureaucratic steps. This suggests that reassignments are relatively costly and take substantial time.

However, there is still the possibility that assignment is not random and this can bias the estimates where we use the judge variables as interaction terms. As discussed in Geerling et al. (2017), the shifting allocation of cases and judges across senates meant that there was *de facto* randomization, in which judges heard a variety of cases against defendants with different characteristics. There are different methods to formally test for randomization. Some studies conduct an F-test or chi-squared test for independence between key defendant characteristics and judge assignment (see, for example, Lim et al., 2016). However, Abrams

et al. (2012) point out that the asymptotic chi-square or F-distribution is inappropriate for testing for randomization across judges in datasets such as ours because of the small number of observations at the level at which randomization occurs. Specifically, as Abrams et al. (2012) note, use of the asymptotic chi-square or F-distribution is likely to over-reject the null hypothesis of random assignment for two reasons. First, for many defendant characteristics, the mean is substantially different than 0.5. Second, while the overall sample is large, regressions suffer from finite-sample bias because sample cells are small within the short time periods that are relevant. Following the approach suggested by Abrams et al. (2012), Geerling et al. (2017) address this problem by applying a Monte Carlo methodology to the same sample of cases/defendants that we employ to explicitly construct a counterfactual in which each defendant characteristic has the same impact on the likelihood of receiving the death sentence for all judges. Their results suggest that across each of the defendant characteristics for which we control that assignment to judges within a given senate and given year was indeed random.

4.2 Results

Table 2 presents the baseline estimates of the effect of German *Wehrmacht* battle deaths on the likelihood that a court ruling would be the death penalty. Columns (1) to (4) increase the lag from current values to the third lag of the battle death variable, $Log(BattleDeaths)$, respectively. The specifications include a linear time trend and month-of-the-year dummies. The coefficient of $Log(BattleDeaths)$ is positive for the current and the lagged values. It is statistically significant for the current (at the 10%-level), the second lag (1%-level), and the third lag (5%-level).

Overall, given that the choice of the lag structure is an empirical one, as the effect is most precisely estimated using the second lag of $Log(BattleDeaths)$, we continue with that variable as our preferred indicator.

Calculating the marginal effect suggests that if the number of battle fatalities double (i.e.

as a result of major battles), the judges are 5% more likely to choose the death penalty.

In columns (5) to (8) we include the full set of defendant and judge characteristics as additional control variables.[4] Including the additional control variables hardly changes the estimated coefficients. If anything, the effects become slightly more precisely estimated as compared to the specifications in columns (1) to (4) .

Table 2 about here

In Table 3 we check whether battle deaths also affect other types of court rulings. Therefore, we replace death penalty outcome by an indicator variable that switches to one if the defendant was acquitted and zero otherwise. We find that higher battle deaths decrease the likelihood of being acquitted.

Table 3 about here

We then proceed with a number of robustness checks. In Table 4 column 1, we estimate equation 1 using OLS instead of probit. We use the second lag of battle deaths, $Log(BattleDeaths)_{t-2}$, and the full set of controls. The estimated coefficient that can be directly interpreted as the marginal effect is somewhat smaller than in the case of probit, but the results are qualitatively the same. Turning our attention to the time aspect of the effect, we first specify a model that includes an interaction term between $Log(BattleDeaths)_{t-2}$ and the linear time trend as an additional regressor. The idea is to analyse if the effect of battle deaths increases or decreases over time. The results in column (2) show that the estimated coefficient of the interaction term is negative, but its magnitude is very small. This can be interpreted as evidence, that the effect of battle deaths on court rulings is relatively constant over the entire sample period. In a next step, we exclude observations from individual years. Overall, the results are robust to the exclusion of particular years. The only exception is if we exclude all trials from 1942. The coefficient is still positive, but the magnitude of the effect decreases and it is less precisely estimated.

[4]Appendix Table A1 presents the full results.

Table 4 about here

In a next step, we examine whether our results are driven by a particular type of offenses or defendant group. In Table 5, we first exclude cases that dealt with subversion of the armed forces (column 1), treason only (2), major high treason only (3) and minor high treason only (4). The magnitude of the effect stays within a very similar range as the main results and are all highly statistically significant.

We then proceed to exclude cases in which the defendant was a member of the military (column 5) or a left-wing political cadre (6). Again, our results are robust to the exclusion of those defendant groups.

Table 5 about here

We now turn our attention to the potential channels through which battle deaths might affect court rulings. In a first step, we investigate whether the effect differs by judge characteristics. We use a dummy variable labeled *Alter Kämpfer* that switches to one if the judge joined the NSDAP (National Socialist German Workers Party) before the Nazis came to power in January 1933 and zero otherwise. This can be considered as a proxy for the judge's ideological commitment. The other variable is called *Experienced Judge*, which is a dummy that switches to one if the judge was a judge in the Weimar Republic and zero otherwise.

Table 6 presents specifications that includes those two dummy variables as well as respective interaction terms between each of those dummies and our main variable of interest, $Log(BattleDeaths)_{t-2}$. The results in column (1) suggest that the effect of battle deaths depends on the level of experience. If anything, more experienced judges seem to be less likely to apply the death penalty in months following heavy losses on the battlefield. In column (2) we find a similar pattern for *Alte Kämpfer* judges. However, this rather surprising result could be due to the relatively high correlation between being an *Experienced Judge* and an *Alter Kämpfer* (0.57). Therefore, we include both interaction terms in the specification in column (3). The estimates show that more experienced judges are less affected by the news

while more ideologically committed judges are more affected by the bad news compared to the reference group of judges who have neither been *Alte Kämpfer* nor *Experienced Judge*. These results indicate that more experienced judges are less susceptible to the influence of legally irrelevant events on judicial decision making. In contrast, strong ideological commitment of judges makes them more susceptible to legally irrelevant information.[5]

Table 6 about here

Many defendants were members of a German or Austrian communist organization and many of the death sentences were handed down to communists. Given the ideological context, we now investigate whether this subgroup of defendants was in particular affected by battle deaths. Column 1 in Table 7 presents the baseline results and the coefficient for the variable *communist*, a dummy variable that switches to one if the defendant was a member of a communist organization and zero otherwise. Column 2 includes $Log(BattleDeaths)_{t-2}$ as well as an interaction term between $Log(BattleDeaths)_{t-2}$ and *communist*. The estimated coefficient of $Log(BattleDeaths)_{t-2}$ is still positive but decreases in magnitude. The estimated coefficient for the interaction term is around 0.125 and statistically significant, indicating that communist defendants were even more affected by the bad news effect. Focusing only on battle deaths from the Eastern front (columns 3 and 4), we do not find a statistically significant effect on the death penalty.

Table 7 about here

In a further robustness test, we replace the battle death variable with major bombing raids on German cities. Bombing raids had a major effect on the morale of the German people. In addition, their exact timing is also orthogonal to the timing of court rulings. The results

[5]One might also expect that judges who served in WWI, or who had a son or sons who saw active service in WWII, may be more likely to impose the death penalty in response to news of higher battle fatalities, but it was not possible to test for this. Unfortunately, we do not have data on whether the judges had sons who were fighting on the Eastern or Western front or in North Africa during WWII. Moreover, each of the judges who heard cases in our sample, served in WWI, except for one (Stier). Hence, as such, our reference group for an interaction term between battle deaths and being a WWI veteran would only include Stier.

in Table 8 provide further support for our main findings. Defendants are systematically more likely to receive the death penalty in a month of a major bombing raid as well as the following months. The magnitude of the effect is also quite large. A major bombing raid in the same month increases the chance of receiving the death penalty by another 20%-points.

Table 8 about here

One concern is that information about increased German losses, or bombing raids of German cities, could lead to increased acts of resistance among the German population. This could, in turn, increase the number of arrests and trials in the People's Court and affect the judges' decision making.

In Table 9 we examine the nexus between battle deaths and bombing raids , arrests, and the death penalty. We first estimate the effect of battle deaths (upper panel) and bombing raids (lower panel) on the number of monthly arrests that eventually led to a defendant appearing in the People's Court, charged with treason or high treason. Given that the dependent variable is the count of arrests in each month we apply a negative binomial estimator. The results in columns 1 to 3 show that higher battle deaths in previous months significantly increase the number of arrests. We find some positive effect of bombing raids in the current month on number of arrests, but the coefficient is not statistically significant at conventional levels.

In the next step we investigate whether the effect of battle deaths and bombing on the death penalty are the result of changes in arrests. One confounding factor could be that battle deaths and bombing raids led to the arrest of a selected sub-group of people who differed from the rest of the defendants by some other unobserved characteristics and who were as a result more likely to receive the death penalty. Therefore, battle deaths, and bombing raids in previous months could simply result in a specific type of defendant appearing more frequently before judges for sentencing.

However, this would only be a concern if the time between arrest and verdict is sufficiently

low (2-3 months). In the case of the People's Court, the median time between arrest and verdict for defendants in our sample was actually almost one year (332 days).

To ensure that our main results are not being driven by the small subset of cases with a shorter arrest-to-verdict time, we first exclude all cases where the arrest-to-verdict time was below 120 days. The results in column 4 reveal that excluding those cases does not change our results. If anything, it improves the precision of the estimates.

In a further robustness test, we include the contemporary value and lags of the monthly number of arrests as additional controls in our preferred specifications for battle deaths and bombing raids. Again, the results do not change qualitatively or quantitatively.

Table 9 about here

So far, we have provided empirical support for the idea that negative legally irrelevant events systematically increase the likelihood of receiving the death penalty. In a next step, we investigate the effect of positive, legally irrelevant events on the likelihood of receiving the death penalty. In particular, we look at victories of the German Men's National Football team, on court rulings. National team games were officially suspended during WWII, as most players joined the armed forces, but a national team was gathered together and played 35 internationals against Germany's allies, neutrals and puppet regimes in the period September 1939-November 1942 (when the last international was played). Playing international games during war proved a mixed blessing for a regime intent on using football superiority as a propaganda coup. Germany thrashed Hungary 7-0 in April 1941 to take the UFWC (Unofficial Football World Championship), but lost 2-1 to Switzerland two weeks later on Hitler's birthday. Joseph Goebbels, the regime's propaganda minister, was furious at the time, declaring: "definitely no sporting exchanges when the result is the least bit unpredictable." (Brown, 2014, p. 63). Germany regained the UFWC in May 1942, thrashing Hungary 5-3, but lost 3-2 to Sweden in Berlin in September 1942 (a game attended by Adolf Hitler, who rarely attended football matches). This defeat marked the beginning of the end for the national football team in Nazi Germany. When the national team lost to Slovakia in

November 1942, the team was dissolved and its players were sent to the Eastern front, where most of them perished. (Brown, 2014, p. 65). Considering the importance of those victories for national pride, we expect that they should have improved the mood of the judges and, therefore, resulted in more lenient verdicts.

The results in Table 10 provide some tentative evidence that this was actually the case. Judges were less likely to apply the death penalty in the months after a victory of the German's National football team.

Table 10 about here

One controversial interpretation of the role of the People's Court is that the judges were supposed to take into account the sentiment of the people. Such an interpretation is based on circulars from the Ministry of Justice - *Richterbriefe* or "letters to the judges"- which supposedly reminded them to take into account the healthy sentiment of the people when sentencing. To the extent such *Richterbriefe* had any legal standing, it might be argued that the 'sentiment of the people' may be influenced by battle losses and bombing raids and, hence, such events were not legally irrelevant to sentencing. Caution should be exercised here, however. Such invocations to follow the people's will were often little more than glib rationalizations for the arbitrariness of the regime. Certainly, Nazi judges did not, nor were they required, to seek out public opinion in implementing sentencing decisions. As Wachsmann (2004, p. 219) explained: "the judges still retained a significant degree of independence and it was they who were ultimately responsible for the judgements".

There are several reasons to think that the effect of battle losses were influencing sentencing outcomes through their effect on judges' mood, rather than through the sentiment of the people. First, the general population knew little about aggregate battle losses, at least in the immediate aftermath of the battles, although the Nazi elite (including the judges of the People's Court) were aware of the losses, as they were compiled and circulated among the regime's senior leadership by the German High Command on a monthly basis (Overmans, 2000). Thus, it is unlikely that the effect of battle losses on sentencing was being driven

by how the judges perceived the sentiment of the people, given the people were generally unaware of the losses. Second, we show that more experienced judges were less affected by battle losses. A large literature shows that more experienced people are less affected by those short-term heuristics (Strough et al., 2013). Third, we have also examined the effect of bombing raids as another variable that arguably is even more exogenous to sentencing (the timing was more or less a surprise and therefore orthogonal to anything that went on in the courts).

As a further check on whether the sentiment of the people had any effect on sentencing outcomes, we combine our data with district (Kreis)-level data from Voigtländer and Voth (2012). They demonstrate the existence of considerable variation in the persistence of anti-Jewish sentiment over centuries in different parts of Germany. In general, one can think that anti-Jewish sentiment is likely to be highly correlated with the local population's demand for a scapegoat in bad times. Invariably, the regime attributed its most critical setbacks to conspiracies ultimately initiated by international Jewry. Therefore, if the judges on the People's Court were taking into account the sentiment of the people, one would expect that the effect of battle casualties and bombing raids on sentencing outcomes would be stronger in areas with more anti-Jewish sentiment.

To implement this test, we build interaction terms between $Log(BattleDeaths)_{t-2}$ and three proxies for the ideological commitment of the population in the defendant's Kreis, respectively. In particular, we use votes for the Nazi Party in 1928, letters to *Der Stürmer* (a rabid anti-semitic newspaper which became a central element of the Nazi propoganda machine), and whether the Kreis witnessed anti-Jewish progroms in 1349 from Voigtländer and Voth (2012).

The results in Table 11 reveal that there is no systematic difference in sentencing outcomes for defendants coming from areas with historically more persistent anti-Jewish sentiment compared with areas in which historically there had been less anti-Jewish sentiment. Similarly, when we interact the bombing raid variable with the Kreis-level data we find no

effect. This result reinforces our argument that the effect of battle losses and bombing raids on sentencing is channeled through its effect on the judges' mood.

Table 11 about here

5 Conclusion

Previous studies have shown that legally irrelevant factors can influence case outcomes (Danzinger et al., 2011; McConnell, 2009; Shayo & Zussman, 2011). We have extended this literature to examine the effect of German battle fatalities in WWII on whether those charged with treason and high treason in wartime Nazi Germany received the death penalty.

The sentencing of defendants convicted of treason and high treason in Nazi Germany provides a unique opportunity to consider the effect of legally irrelevant factors on sentencing outcomes. The psychology literature has shown that one's mood can subconsciously affect one's evaluation and information processing (see Bagues & Esteve-Volart, 2013; Healy et al., 2010; Miller, 2013; Shayo & Zussman, 2011). A negative emotional response to an event in one domain, such as observing an increase in battle losses, which a judge feels powerless to control, can be expected to affect adversely the judges mood and, as such, influence decision-making in another domain - sentencing defendants - that the judge can control.

One would expect that this channel for emotions to be particularly strong for judges sitting in a politicised court, such as the People's Court, during wartime. While the judges may not have been able to exact retribution for higher battle losses on the front, on a regular basis they were sentencing individuals who were charged with crimes against the state. While those charged with treason and high treason could not be directly responsible for battle losses in the months preceding their sentencing, it is entirely possible that the outrage that the judges felt in response to learning of higher fatalities at the front adversely affected how they viewed defendants appearing before them, charged with offenses against the state.

Our results are consistent with the existence of such a channel. Our main finding is that

if the number of battle fatalities double, two months later judges are 5 per cent more likely to impose the death penalty on those convicted of treason and high treason. We find that the sentencing decisions of more experienced judges are less likely to be affected by battle deaths, while judges who were more ideologically committed to the regime were more likely to impose the death penalty in response to higher battle deaths. We also find some evidence that communist defendants were more likely to receive the death sentence in the months following higher battle deaths, although this result is not robust if we consider only battle fatalities from the Eastern front.

The findings for battle deaths on sentencing outcomes are reinforced by results which show that major allied bombing raids increased the likelihood of being sentenced to death two months after the raids and a win by the national football team decreased the likelihood of being sentenced to death two months after the match had been played.

We have posited that the observed effect of external legally irrelevant events on sentencing occur via the impact of those external events on the judge's mood. A limitation of the analysis undertaken in this paper is that, of course, we have not been able to directly measure the judge's mood. The findings, nevertheless, are consistent with the existence of such a channel and do show that legally irrelevant external events can influence judicial decisions. As such, the findings presented here contribute to the literature which asserts that judges are susceptible to emotional biases (Danzinger et al., 2011; Guthrie et al., 2001; 2007; Jones et al., 2013). The results also provide support for the legal realist view of the law that psychological, political and social factors influence case outcomes (Posner, 1986). More generally, our results add to the literature suggesting that not only professional decision-makers, such as judges, but how the general public votes at election time (Bagues & Esteve-Volart, 2011; Healy et al., 2010; Miller 2013) and even how public opinion is formed (Bang Peterson et al., 2014) are susceptible to cognitive biases associated with external events. While our findings are for an historical court, we suspect that judges in contemporary courts reacting to external threats, such as terrorism, may be subject to the same heuristic biases,

when sentencing defendants that bring those biases to the fore.[6]

[6] A good case in point might be a defendant of the same ethnicity as those behind a recent terrorist attack.

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Figures & Tables

Table 1: Descriptive Statistics

Variable	Obs.	Mean	Std. Dev.	Min.	Max.
Death	2,430	0.423	0.494	0.000	1.000
Acquitted	2,430	0.069	0.253	0.000	1.000
BattleDeaths	2,430	91,916	73,782	0.000	348,960
Experienced Judge	2,430	0.522	0.500	0.000	1.000
Alter Kämpfer	2,430	0.451	0.498	0.000	1.000
Communist	2,430	0.691	0.462	0.000	1.000
BombingRaid	2,430	0.054	0.226	0.000	1.000
FootballVictory	901	0.397	0.490	0.000	1.000

Table 2: Effect of Battle Deaths on Death Penalty

$P(Death = 1\|X)$	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
$Log(BattleDeaths)_t$	0.171*				0.148*			
	(0.092)				(0.083)			
$Log(BattleDeaths)_{t-1}$		0.050				0.051*		
		(0.031)				(0.030)		
$Log(BattleDeaths)_{t-2}$			0.137***				0.144***	
			(0.047)				(0.048)	
$Log(BattleDeaths)_{t-3}$				0.074**				0.078**
				(0.035)				(0.036)
Other Controls	*No*	*No*	*No*	*No*	*Yes*	*Yes*	*Yes*	*Yes*

Notes: # of Obs: 2,431. Probit Estimates; Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the sentence was the death penalty and zero otherwise. For list of other controls refer to Table A1. All Specifications include month of the year dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.

Table 3: Effect of Battle Deaths on Being Acquitted

$P(Acquitted = 1\|X)$	(1)	(2)	(3)	(4)
$Log(BattleDeaths)_t$	-0.145***			
	(0.030)			
$Log(BattleDeaths)_{t-1}$		-0.035		
		(0.023)		
$Log(BattleDeaths)_{t-2}$			-0.109***	
			(0.029)	
$Log(BattleDeaths)_{t-3}$				-0.048*
				(0.027)

Notes: # of Obs: 2,431. Probit Estimates; Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the defendant was acquitted and zero otherwise. All Specifications include all other control variables, month and locations dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.

Table 4: Effect of Battle Deaths on Death Penalty Robustness

$P(Death = 1\|X)$	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
			Excluding					
			1939	1940	1941	1942	1943	1944
$Log(BattleDeaths)_{t-2}$	0.027***	0.337**	0.135**	0.209**	0.140***	0.056*	0.134***	0.148**
	(0.008)	(0.154)	(0.060)	(0.085)	(0.036)	(0.030)	(0.044)	(0.075)
$Log(BattleDeaths)_{t-2}$		-0.009***						
$\times Time$		(0.003)						
Observations	2,430	2,430	2,395	2,310	2,303	1,907	1,769	1,454

Notes: Column (1): OLS. Columns (2)-(8): Probit. Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the sentence was the death penalty and zero otherwise.All Specifications include all other control variables, month and locations dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.

Table 5: Effect of Battle Deaths on Death Penalty Excluding Different Types of Offenses and Defendants

$P(Death = 1\|X)$	(1)	(2)	(3)	(4)	(5)	(6)
			Excluding			
		Offense Type:			*Defendant Type:*	
	Military	Treason	Maj. Treason	Min. Treason	Military	Pol. Cadre
$Log(BattleDeaths)_{t-2}$	0.144***	0.139***	0.127***	0.135***	0.139***	0.172***
	(0.050)	(0.048)	(0.049)	(0.047)	(0.046)	(0.065)
Observations	1,776	2,375	1,355	2,323	2,396	2,236

Notes: Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the sentence was the death penalty and zero otherwise. All Specifications include all other control variables, month and locations dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.

Table 6: Battle Deaths, Judge Characteristics, and Court Rulings

$P(Death = 1\|X)$	(1)	(2)	(3)
$Log(BattleDeaths)_{t-2}$	0.290***	0.247***	0.286***
	(0.067)	(0.072)	(0.070)
Experienced Judge	-0.178***		-0.200
$\times$ $Log(BattleDeaths)_{t-2}$	(0.051)		(0.136)
Alter Kämpfer		-0.131**	0.026
$\times$ $Log(BattleDeaths)_{t-2}$		(0.061)	(0.152)
Experienced Judge	2.178***	0.190	2.412
	(0.595)	(0.158)	(1.563)
Alter Kämpfer	0.119	1.566**	-0.165
	(0.182)	(0.704)	(1.728)

Notes: # of Obs: 2,431. Probit Estimates. Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the sentence was the death penalty and zero otherwise. All Specifications include all other control variables, month and location dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.

Table 7: Battle Deaths on the Eastern Front, Defendants Political Affiliation, and Court Rulings

$P(Death = 1\|X)$	(1)	(2)	(3)	(4)
$Log(BattleDeaths)_{t-2}$	0.137***	0.098**		
	(0.050)	(0.046)		
Communist		0.125*		
$\times$ $Log(BattleDeaths)_{t-2}$		(0.072)		
$Log(BattleDeathsEast)_{t-2}$			-0.083	-0.030
			(0.101)	(0.162)
Communist				-0.037
$\times$ $Log(BattleDeathsEast)_{t-2}$				(0.147)
Communist	0.443***	-0.939		0.873
	(0.119)	(0.789)		(1.627)
Observations	2,431	2,431	2,186	2,186

Notes: Probit estimates; Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the sentence was the death penalty and zero otherwise. All Specifications include all other control variables, month and locations dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.

Table 8: Bombing Raids and Court Rulings

$P(Death = 1\|X)$	(1)	(2)	(3)
$BombingRaid_t$	0.526**		
	(0.225)		
$BombingRaid_{t-1}$		0.326	
		(0.220)	
$BombingRaid_{t-2}$			0.509**
			(0.259)

Notes: # of Obs: 2,431. Probit estimates; Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the sentence was the death penalty and zero otherwise. All Specifications include all other control variables, month and locations dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.

Table 9: Battle Deaths, Bombings, Arrests and Death Penalty

	Arrests			$P(Death = 1\|X)$				
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
$Log(BattleDeaths)_t$	0.030							
	(0.035)							
$Log(BattleDeaths)_{t-1}$		0.103***						
		(0.025)						
$Log(BattleDeaths)_{t-2}$			0.091***	0.133***	0.143***	0.134**	0.129**	0.138**
			(0.019)	(0.044)	(0.051)	(0.054)	(0.058)	(0.063)
$Arrests_t$					0.001			
					(0.003)			
$Arrests_{t-1}$						-0.237		
						(0.313)		
$Arrests_{t-2}$							-0.239	
							(0.313)	
$Arrests_{t-3}$								-0.235
								(0.312)
$BombingRaid_t$	0.178			0.649***	0.541**	0.520**	0.514**	0.510**
	(0.156)			(0.192)	(0.240)	(0.222)	(0.221)	(0.220)
$BombingRaid_{t-1}$		-0.311						
		(0.214)						
$BombingRaid_{t-2}$			-0.187					
			(0.216)					
$Arrests_t$					0.002			
					(0.003)			
$Arrests_{t-1}$						-0.278		
						(0.325)		
$Arrests_{t-2}$							-0.285	
							(0.325)	
$Arrests_{t-3}$								-0.283
								(0.325)
Obs.	64	64	64	2,265	2,341	2,329	2,319	2,311

Notes: Probit Estimates; Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the sentence was the death penalty and zero otherwise. For list of other controls refer to Table A1. All Specifications include month of the year dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.

Table 10: German Men's National Football Team Victories and Court Rulings

$P(Death = 1\|X)$	(1)	(2)	(3)
$FootballVictory_t$	-0.023		
	(0.235)		
$FootballVictory_{t-1}$		0.283	
		(0.222)	
$FootballVictory_{t-2}$			-0.512**
			(0.234)

Notes: # of Obs: 901. Probit estimates; Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the sentence was the death penalty and zero otherwise. All Specifications include all other control variables, month and locations dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.

Table 11: Battle Deaths, *Volkszorn*, and Court Rulings

$P(Death = 1\|X)$	(1)	(2)	(3)
$Log(BattleDeaths)_{t-2}$	0.116*	0.119**	0.124***
	(0.065)	(0.052)	(0.047)
Votes for NSDAP 1928	0.733		
$\times$ $Log(BattleDeaths)_{t-2}$	(2.725)		
Votes for NSDAP 1928	-7.495		
	(31.939)		
Stürmer Letters		0.006	
$\times$ $Log(BattleDeaths)_{t-2}$		(0.005)	
Stürmer Letters		0.029	
		(0.034)	
Pogrom in 1349			-0.001
$\times$ $Log(BattleDeaths)_{t-2}$			(0.103)
Pogrom in 1349			0.207
			(1.174)
Observations	791	791	787

Notes: # of Obs: 2,431. Probit estimates; Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the sentence was the death penalty and zero otherwise. All Specifications include all other control variables, month and locations dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.

Table A1: Effect of Battle Deaths on Death Penalty - Full Results

$P(Death = 1\|X)$	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
$Log(BattleDeaths)_t$	0.171*				0.148*			
	(0.092)				(0.083)			
$Log(BattleDeaths)_{t-1}$		0.050				0.051*		
		(0.031)				(0.030)		
$Log(BattleDeaths)_{t-2}$			0.137***				0.144***	
			(0.047)				(0.048)	
$Log(BattleDeaths)_{t-3}$				0.074**				0.078**
				(0.035)				(0.036)
Age					0.008	0.007	0.008	0.008
					(0.020)	(0.020)	(0.020)	(0.020)
Age^2					-0.000	-0.000	-0.000	-0.000
					(0.000)	(0.000)	(0.000)	(0.000)
Male					0.676***	0.672***	0.664***	0.665***
					(0.079)	(0.080)	(0.080)	(0.080)
Unemployed					-0.188	-0.428	-0.342	-0.330
					(0.367)	(0.312)	(0.332)	(0.306)
Education					0.049	0.054	0.062	0.058
					(0.042)	(0.042)	(0.043)	(0.042)
Partial Jewish					0.073	0.088	0.082	0.089
Ancestry					(0.288)	(0.293)	(0.294)	(0.293)
Juvenile					-0.560	-0.546	-0.558	-0.542
					(0.454)	(0.451)	(0.455)	(0.444)
Catholic					-0.484***	-0.485***	-0.493***	-0.495***
					(0.133)	(0.133)	(0.132)	(0.132)
Foreigner					0.248*	0.299*	0.241	0.321*
					(0.146)	(0.158)	(0.152)	(0.167)
Judge Age					0.309**	0.324**	0.326**	0.321**
					(0.140)	(0.140)	(0.138)	(0.139)
Judge Age^2					-0.003**	-0.003**	-0.003**	-0.003**
					(0.001)	(0.001)	(0.001)	(0.001)
Judge					0.148	0.115	0.160	0.133
Weimar					(0.161)	(0.160)	(0.160)	(0.160)
Alter					0.152	0.192	0.163	0.173
Kämpfer					(0.177)	(0.180)	(0.180)	(0.180)
Judge					-0.766	-0.749	-0.806	-0.796
Catholic					(0.755)	(0.749)	(0.745)	(0.737)
Location dummies	*No*	*No*	*No*	*No*	*Yes*	*Yes*	*Yes*	*Yes*
Observations	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430

Notes: Coefficients reported. *** (**, *): significant at the one (five, ten) percent level. Dep. Variable: Dummy variable that switches to one if the sentence was the death penalty and zero otherwise. All Specifications include month of the year dummies and a linear time trend. Standard errors (in parenthesis) are clustered at the year-month level.